

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

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JOSE ANGEL SANTANA, : **COMPLAINT**  
 :  
Plaintiff, :  
 :  
-against- :  
 :  
NEW YORK UNIVERSITY; : Plaintiff Demands  
 : a Trial by Jury  
 :  
Defendant. :  
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Plaintiff JOSE ANGEL SANTANA (“Dr. Santana” or “plaintiff”), by his attorneys, LEVINE & BLIT, PLLC, complaining of defendant NEW YORK UNIVERSITY (hereinafter “defendant”), alleges as follows:

**NATURE OF THE ACTION**

1. This action is brought to remedy the discrimination and harassment based upon race and color, in the terms and conditions of employment, hostile work environment, and retaliation, in violation of the New York State Human Rights Law, New York Executive Law §296, *et seq.* (“Executive Law”); and the Administrative Code of the City of New York §8-107 *et seq.* (“Administrative Code”).
2. Defendant's actions were unlawful and plaintiff seeks injunctive and declaratory relief, compensatory and punitive damages, attorney’s fees, and other appropriate legal and equitable relief pursuant to the Executive Law, the Administrative Code, and such other and further relief as the Court deems necessary and proper.

**JURISDICTION AND VENUE**

3. Jurisdiction of this Court is appropriate pursuant to N.Y. Civil Practice Law and Rules §301, the Executive Law, and the Administrative Code.

4. Venue of this Court is appropriate pursuant to N.Y. Civil Practice Law and Rules §503 as the defendant resides in the County of New York.

#### PARTIES

5. Plaintiff is a male of both Hispanic and African race based upon his Cuban and African ancestry, and brown color. Plaintiff resides in the State of New Jersey, County of Hudson.

6. Defendant New York University (“NYU” or “defendant”) is a private, not for profit university, with in campus located in New York City.

7. At all times relevant to this action, NYU maintained an employment relationship with thirty (30) or more individuals and is an “employer” within the meaning of applicable state and local statutes.

8. At all time relevant to this action, John Tintori (“Tintori”), a Caucasian, American male, served as Chairman of the Graduate Film Department (“the Department”) for the defendant and, as such, held a supervisory position over the plaintiff and was in a position of authority to undertake or recommend tangible employment decisions and/or control the terms and conditions of plaintiff’s employment with defendant.

9. At all times relevant to this action, Jay Anania (“Anania”), a Caucasian, American male, served as Head of Directing at the NYU Graduate Acting School and, as such, held a supervisory position over the plaintiff and was in a position of authority to undertake or recommend tangible employment decisions and/or control the terms and conditions of plaintiff’s employment with defendant.

10. At all times relevant to this action, plaintiff was with the skills, experience and qualifications necessary to work in his employment position for the defendants.

## FACTUAL ALLEGATIONS

11. Dr. Santana commenced his employment relationship with defendant on or about September 1, 2008, as a visiting Assistant Arts Professor and, additionally, as Head of Acting.

12. From the very beginning and throughout the duration of his employment, with the exception of Dr. Santana, professors in the Graduate Film Department were racially and ethnically homogeneous. Upon information and belief, Dr. Santana was the only full-time professor of color in the Department throughout his employment tenure.

13. The Department was historically devoid of any representation from the Hispanic community, as well. Upon information and belief, Dr. Santana was the *only* Hispanic full-time Arts Professor in the *history* of the NYU Graduate Film School Department.

The Department was historically lacking of any representation from peoples of African ancestry, as well. Upon information and belief, Dr. Santana was the *only* full-time teaching Arts Professor of African ancestry in the *history* of the NYU Graduate Film School Department.

14. From the very beginning of his employment tenure, Dr. Santana was afforded less favorable conditions of employment in relation to his predominantly Caucasian colleagues. Upon joining the Department, Dr. Santana was placed in vastly inferior office space in relation to his colleagues, office space which was in no way equivalent to that which would be associated with a full-time Arts Professor in the Department. The space assigned to Dr. Santana was, essentially, a storage closet. Dr. Santana's 'office' contained the supplies for the Department. Dr. Santana would be interrupted by constant traffic, from members of the Department when they needed kitchen supplies, to and from the storage closet.

15. Upon information and belief, by practice every other NYU Arts Professor is assigned their own private office. Dr. Santana was assigned to this inferior office space throughout his employment tenure.

16. In 2010, Dr. Santana was forced to share his already inferior office space, and storage closet, with a 'teacher' rank instructor. Upon information and belief, no Caucasian NYU Arts Professors have been forced to share their office with a 'teacher' rank instructor.

17. Additionally, upon information and belief, the inferior office space which was assigned to Dr. Santana was the only office space with constant water leaks. On numerous occasions, Dr. Santana requested to be moved to an appropriate office space, based on his ranking as full-time Arts Professor and based on the offices assigned to other, similarly situated professors, but was refused.

18. Additionally, upon information and belief defendant compensated Dr. Santana at a pay rate significantly below his similarly situated, full-time, Caucasian colleagues.

19. Throughout his employment tenure, Dr. Santana received an annual salary of approximately \$70,000, which, upon information and belief, was approximately \$15,000 below the average compensation for full-time Arts Professors.

20. Dr. Santana held a Ph.D. degree. Upon information and belief, a Ph.D. degree customarily raises a full-time professor's salary at least \$10,000. Dr. Santana received no such additional compensation even though he held a Ph.D. degree.

21. Throughout Dr. Santana's employment tenure, Dr. Santana was routinely and unjustifiably excluded from certain meetings in the Department, and ordered by Tintori not to speak and participate in other meetings and events. Upon information and belief, Dr. Santana's Caucasian colleagues were not treated in such a matter.

22. Defendant sought every opportunity to treat Dr. Santana unfairly in relation to his Caucasian colleagues, and to diminish his authority and expertise as a full-time professor in the Department. In or around the spring semester, 2010, Dr. Santana had as a student in his Directing the Actor II class - world renowned movie star, James Franco ("Franco"). Franco was matriculated in the Department's Masters of Fine Arts [MFA] program.

23. At the conclusion of the Spring, 2010, semester, Dr. Santana gave Franco a grade of 'D' in his [Directing the Actor II] class, as a result of Franco's poor attendance. In Dr. Santana's class, Franco had approximately twelve (12) unexcused absences out of fourteen (14) total classes. Dr. Santana, as a full-time professor in the Department, had every right to give such a grade to a student who failed to adequately attend and participate in his class.

24. Upon information and belief, though Franco's attendance and participation were similar in his other classes at NYU, most professors other than Dr. Santana gave Franco high grades.

25. As a result of receiving a 'D' grade, Franco responded by making several public disparaging and inaccurate statements regarding his professor, Dr. Santana. Franco's public statements, and the resulting mass exposure they received on television and the internet, threatened to harm the reputation of NYU, The Graduate Film School and of Dr. Santana. NYU took no disciplinary action against Franco.

26. Franco's public statements against Dr. Santana were misleading and inaccurate. Franco's public statements referred to the 'D' that Dr. Santana allegedly gave him in an 'acting' class, even though it was actually Dr. Santana's Directing the Actor II class in which he received a 'D'. The resulting publicity ridiculed Dr. Santana allegedly for giving an award-winning actor a 'D' in acting, even though the 'D' was actually in directing actors, and for abhorrent attendance.

27. Tintori, Dr. Santana's supervisor, immediately sided with Franco, and used this incident as an opportunity to further isolate and treat Dr. Santana disparately based on Dr. Santana's race and color.

28. Upon information and belief, one other professor gave Franco a similarly low grade. Tintori completed that professor's initial arts professor review, as required by policy and as was necessary for that professor's eventual reappointment.

29. As for Dr. Santana, Tintori merely shouted at, and reprimanded, Dr. Santana, and ignored him subsequently. Subsequent to the incident of Franco's 'D' grade broadcast, for the entire school year of 2010 to 2011, Tintori virtually cut off all communication with Dr. Santana. Tintori refused to communicate with Dr. Santana regarding Dr. Santana's curriculum, Dr. Santana's teaching, or Dr. Santana's supervision of the acting area's staff. Most importantly, Tintori refused to follow the university's required policies and to perform any of the university's basic required procedures throughout Dr. Santana's initial arts professor review, which was necessary for Dr. Santana's eventual reappointment.

30. Dr. Santana was in disbelief that he would be punished and further isolated by his supervisor for giving Franco, who missed twelve classes, a 'D' grade. Dr. Santana, upon information and belief, learned that most other professors gave Franco good to excellent grades, despite his lack of attendance and input. Dr. Santana learned that Franco failed to attend any and all of the department's course work that is required and mandatory for all other 3rd Year students during academic year 2010 to 2011, yet was given passing grades and full credit from teachers whose identities have never been disclosed to the rest of the faculty.

31. Dr. Santana then learned that a potential for serious instances of conflicts of interest existed between Franco and other department's faculty. Dr. Santana, upon information and belief, came to learn that *Franco had hired and financed his own professor*, Jay Anania, to write and direct a movie starring Franco. Dr. Santana learned, upon information and belief, that Franco as a matriculated student under Anania, hired his own professor, Anania, on at least two occasions.

32. Dr. Santana also learned that Tintori, the Chair of the Department, had performed a *cameo role* in a movie financed by Franco, and written and directed by Anania.

33. Dr. Santana was concerned of the clearly implied conflict of interest of a matriculated student, Franco, providing work for, and compensating, his own professor, among other things. It was Dr. Santana's belief that, based on NYU's policies and practices, having a movie star student act as leading actor in their own professor's for-profit movie was, in itself, of such

substantial value to a professor's career advancement and potential for financial gain that a conflict of interest and a conflict of commitment existed and, therefore, university policy was clearly violated.

34. Dr. Santana's concern was heightened by the fact that NYU professors are responsible for mentoring their students to write and direct their own films in a *not-for-profit* setting, and other, capable, NYU students could have benefitted from the professor's guidance to direct Franco in their works.

35. Due to his concern about the threat to the integrity of the university and the pressures to comply with turning a blind eye that Dr. Santana felt from Tintori and Anania, on or about June 20, 2011, Dr. Santana brought his concerns regarding these clear violations of policy and conflicts of interest to the appropriate supervisor, NYU, Tisch School of the Arts, Associate Dean of Faculty Dr. Louis Scheeder. But, in further acts to treat Dr. Santana unfairly in relation to his Caucasian colleagues, and to diminish his authority and expertise as a full-time professor in the Department, the university ignored all of Dr. Santana's concerns.

36. Dr. Santana took action against the disparate treatment he was receiving. On or about May 25, 2011, Dr. Santana wrote an email to Tintori complaining about disparate treatment regarding the office space.

37. Soon thereafter, on June 7, 2011, Dr. Santana received an email from Tintori stating that he was summarily and unilaterally demoted by Tintori, and was no longer Head of Acting. No performance justification was ever given to Dr. Santana for Tintori's actions. Dr. Santana was assigned to report under and to Professor Jay Anania whom James Franco had hired.

38. Dr. Santana's unilateral and summary demotion caused a loss of compensation in the amount of approximately \$3,000 per year, and removal of management responsibilities in relation to the position.

39. Upon information and belief, Dr. Santana's unilateral and summary demotion was against the normal practices of the defendant with respect to such reorganizations and, as such, violated defendant's normal due process afforded to affected parties. Defendant's demotion of plaintiff was motivated by discrimination and retaliation, and was unjustified and against normal practice.

40. Upon information and belief, Dr. Santana's Caucasian colleagues were never demoted in such a manner. As well, upon information and belief, Dr. Santana was the only staff in the Department affected by demotion and pay cut at that time. None of Dr. Santana's Caucasian colleagues were demoted at that time.

41. Upon information and belief, when such reorganizations occur within NYU, a consultation procedure is put into place. The consultation procedure involves the school's faculty, and curriculum committee. The consultation procedure also allows a proposal for continuation of the current organization, and a committee report analyzing the potential reorganization.

42. Upon information and belief, Dr. Santana's demotion and pay cut were solely the result of a unilateral and unjustified decision by Tintori.

43. Dr. Santana also came up for reappointment throughout the Fall 2010 through Summer, 2011 time frame. As per NYU policy and practice, full-time Assistant Arts Professors serve four (4) year terms with unlimited reappointments available. In most cases, the reappointment procedure is a mere formality. In the cases of Dr. Santana's Caucasian colleagues, the reappointment procedure is almost always a formality with the vast majority of those colleagues being reappointed without issue.

44. In the only, single recent instance of a denial of reappointment, the professor, who was neither black nor Hispanic, was allowed to remain teaching while her grievance was under review. Dr. Santana was involuntarily withdrawn from his teaching duties and committee assignments. Dr. Santana was barred from attending any and all faculty meetings. Dr. Santana was barred from receiving any and all department email and announcements. Dr. Santana was



informed this is not punitive but at the same time Tintori insisted Dr. Santana's effective exile from the department was not open to discussion.

45. Upon information and belief, in the same single recent instance of a denial of reappointment, the professor, was reinstated.

46. Upon information and belief, though Dr. Santana has followed all of the university's policies and procedures to appeal his denial of reappointment, which include, filling a formal grievance with the appropriate Dean Mary Schmidt Campbell, Tintori has announced to staff, faculty and students that Dr. Santana's non-reappointment is irreversible.

47. Upon information and belief, in violation of the university's reappointment review policies that insist on total confidentiality, Tintori has provided false and damaging information to students about Dr. Santana denial of reappointment, in order to dissuade students' desire to show their organized and enthusiastic support for Dr. Santana's reappointment.

48. Despite the refusal to reappoint Mr. Santana, Tintori has never expressed any adverse job performance matter to Dr. Santana. Additionally, Tintori has refused to discuss Dr. Santana's non-reappointment.

49. According to defendant's Professor Guidelines – Initial Appointment Renewal/Non-Renewal, certain procedures were required to be followed by defendant with relation to Dr. Santana's potential reappointment. According to this policy, all Assistant Arts Professors are required to receive annual written evaluations by the Department Chair, Tintori, leading up to their reappointment decision, so that the professor could adequately prepare to be evaluated when his or her reappointment time came. Dr. Santana never received any required annual evaluation.

50. Upon information and belief, Dr. Santana's Caucasian colleagues always received annual evaluations.

51. Also, Assistant Arts Professors are to be observed in their classroom by an Appointment Committee member, with the observation to be used as part of the reappointment decision. Dr. Santana was never observed in his classroom by the department assigned reappointment Committee member, Jay Anania.

52. Upon information and belief, Dr. Santana's Caucasian colleagues always received qualified classroom observations which were later used in their reappointment evaluation.

53. In fact, Tintori, the person mostly responsible for the unfair and disparate treatment directed at Dr. Santana, had the authority to appoint Dr. Santana's reappointment committee, and to decide who was assigned to perform the classroom observation.

54. Tintori chose Anania as a reappointment committee member, the very person who Dr. Santana complained about regarding the Franco conflict of interest, the very professor who benefitted upon Franco hiring him to write and direct his movies. Tintori, as well, chose to comprise Santana's committee with two members who had very close ties to Tintori.

55. Tintori, as well, approved of Anania to perform Dr. Santana's classroom observation, which was required as per NYU policy and which was to play a large role in Dr. Santana's reappointment decision.

56. Upon information and belief, for no justifiable reason Anania failed to perform the classroom observation of Dr. Santana, which was one of the mandatory procedures to be followed leading up to Dr. Santana's reappointment decision. As Dr. Santana's classes were always well-received, the failure of a qualified committee member to perform the observation, as required by policy, unfairly harmed Dr. Santana's opportunity for reappointment. Upon information and belief, all Caucasian professors up for reappointment had qualified classroom evaluations performed on them.

57. On or about August 17, 2011, Dr. Santana received notice of the denial of his reappointment, effective August 31, 2012, in a letter from Dean Mary Schmidt Campbell.

58. Dr. Santana was stunned by the decision not to reappoint him, as Dr. Santana's Caucasian Arts Professor colleagues were routinely reappointed without exception.

59. Dr. Santana was stunned, as well, by the decision not to reappoint him as no performance issues were ever raised to Dr. Santana by Tintori or any of his supervisors.

60. As per defendant's policy, reappointment decisions follow strict criteria, and are made based on teaching, professional work and community work.

61. No legitimate, non-discriminatory reason existed for Dr. Santana's failure to be reappointed. Dr. Santana's student evaluations reflecting his teaching skills were always outstanding. The only possible 'deficiency' in Dr. Santana's file regarding his teaching was Anania's refusal to perform Dr. Santana's classroom observation as part of the review committee. No issues were ever brought to Dr. Santana regarding his teaching prior to the negative reappointment decision.

62. Dr. Santana was routinely praised for his professional and community work, including by Dean Campbell, herself. No issues were ever brought to Dr. Santana regarding his professional and community work prior to the negative reappointment decision.

63. Dr. Santana, the only person of color in the Department and the only full-time Arts Professor Hispanic in the history of the NYU Graduate Film Department, was clearly held to a much higher standard than his similarly situated Caucasian colleagues when evaluated for reappointment. Dr. Santana should not have been terminated based on his performance, and would have been reappointed but for the Defendant's discriminatory practices.

64. On August 29, 2011, in a further act of discrimination versus Dr. Santana, Tintori and Dean Scheeder informed Dr. Santana that he was relieved of his teaching and committee duties for the entire academic year of 2011-2012, up to the end of his employment term. Dr. Santana

was given no valid justification for such action, and was told by Tintori and Dean Scheeder that the decision to remove him from all of his duties was final and not open for discussion.

### **FIRST CAUSE OF ACTION AGAINST DEFENDANTS**

(Discrimination based on Race and Color under Executive Law §296)

65. Plaintiff hereby realleges each and every allegation contained in Paragraphs 1 through 64 as if fully set forth herein.

66. New York Executive Law §296 *et seq.* creates statutory rights against invidious discrimination and harassment based upon race and/or color in the terms and conditions of employment.

67. The plaintiff was subjected to invidious discrimination and harassment in his employment, based upon his race and/or color, up to, and including, defendant's decision to terminate plaintiff.

68. Defendant condoned the discriminatory acts and practices as alleged above and, as a result, the plaintiff has suffered, and will continue to suffer, substantial losses including loss of past earnings and other employment benefits, and has suffered other monetary and compensatory damages for, *inter alia*, mental anguish, emotional distress and humiliation.

69. Defendants acted intentionally and with malice and reckless indifference to plaintiff's statutory rights under New York Human Rights law, Executive Law §296 *et seq.*, and are thereby liable to plaintiff for compensatory damages under the Executive Law.

### **SECOND CAUSE OF ACTION AGAINST DEFENDANTS**

(Discrimination based on Race and Color under Administrative Code)

70. Plaintiff hereby realleges each and every allegation contained in Paragraphs 1 through 69 as if fully set forth herein.

71. The Administrative Code of the City of New York §8-107 *et seq.* creates statutory rights against invidious discrimination and harassment based upon race and/color in the terms and conditions of employment.

72. The plaintiff was subjected to invidious discrimination and harassment in his employment, based upon his race and/or color, up to, and including, defendant's decision to terminate plaintiff, and the unlawful behavior perpetrated by defendant included but was not limited to the unfair and preferential treatment afforded to Caucasian employees at the expense of non-Caucasian employees in the hiring and firing practices of the employer, and the terms of employment.

73. Defendants acted intentionally and with malice and reckless indifference to plaintiff's statutory rights under the Administrative Code, and are thereby liable to plaintiff for compensatory damages under the Administrative Code.

**THIRD CLAIM AGAINST DEFENDANTS**  
(Retaliation in Violation of Executive Law §296)

74. Plaintiff hereby realleges each allegation contained in Paragraphs 1 through 73 as if fully set forth at length herein.

75. Defendant wrongfully demoted and failed to reappoint plaintiff after plaintiff complained about unlawful discrimination in the terms and conditions of his employment, and the plaintiff's complaints of unlawful discrimination were a motivating factor in the defendants' decision to demote and, ultimately terminate, plaintiff.

76. The defendant's proffered reason(s) for the plaintiff's demotion and failure to reappoint plaintiff are merely a pretext for discrimination and retaliation because the defendants had no justifiable reason to demote, and to ultimately terminate the plaintiff, and only demoted and terminated plaintiff subsequent to his complaints and subsequent to the discriminatory treatment.

77. As a result of defendants' retaliatory acts, the plaintiff was wrongfully demoted and, ultimately, terminated from his employment and has suffered and will continue to suffer substantial losses, including loss of past and future earnings and other employment benefits, and has suffered other monetary and compensatory damages for, *inter alia*, mental anguish, emotional distress, and humiliation.

#### **FOURTH CLAIM AGAINST DEFENDANTS**

(Retaliation in Violation of Administrative Code)

78. Plaintiff hereby realleges each allegation contained in Paragraphs 1 through 77 as if fully set forth at length herein.

79. Defendant wrongfully demoted and failed to reappoint plaintiff after plaintiff complained about unlawful discrimination in the terms and conditions of his employment, and the plaintiff's complaints of unlawful discrimination were a motivating factor in the defendants' decision to demote and, ultimately terminate, plaintiff.

80. The defendant's proffered reason(s) for the plaintiff's demotion and failure to reappoint plaintiff are merely a pretext for discrimination and retaliation because the defendants had no justifiable reason to demote, and to ultimately terminate the plaintiff, and only demoted and terminated plaintiff subsequent to his complaints and subsequent to the discriminatory treatment.

81. As a result of defendants' retaliatory acts, the plaintiff was wrongfully demoted and, ultimately, terminated from his employment and has suffered and will continue to suffer substantial losses, including loss of past and future earnings and other employment benefits, and has suffered other monetary and compensatory damages for, *inter alia*, mental anguish, emotional distress, and humiliation.



